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October 21, 2003

VIA EMAIL AND OVERNIGHT MAIL

Mary Cottrell, Secretary
Commonwealth of Massachusetts
Department of Telecommunications & Energy
One South Station
Boston, Massachusetts 02110

Re: Proceeding to Implement Requirements of the FCC's Triennial Review Order,
Docket No. D.T.E. 03-59

Dear Ms. Cottrell:

PAETEC Communications, Inc. ("PAETEC") is a full-service, facilities-based competitive local exchange carrier ("CLEC") that provides a broad range of telecommunications services nationally and within the Commonwealth to business and residential customers. PAETEC hereby respectfully submits these Comments in the above referenced docket.

PAETEC specifically supports DSCI/InfoHighway's argument that Verizon must establish a reliable DS1 hot cut process before the Department can affirm the FCC's non-impairment finding for enterprise switching.¹ Like DSCI/InfoHighway, PAETEC has engaged Verizon in hot cut discussions and found it slow to respond, although Verizon has admitted that a DS1 hot cut process is technically feasible.

DSCI/InfoHighway have stated that they rely on the availability of facilities-based alternate providers to in order to serve their customers. As a facilities-based provider of long standing, PAETEC is very experienced in providing high capacity switched services and would be able to provide vigorous competition to Verizon, assuming that procedures were in place to efficiently transfer the end user customers' service without disruption. Thus, a stable hot cut

¹ Proceeding to Implement Requirements of the FCC's Triennial Review Order, Docket No. Ma. D.T.E. 03-59, Joint DSCI and InfoHighway Verified Offer of Proof on DS-1 Switching Impairment at 10-13 (Oct. 15, 2003).

process would contribute to the FCC's goal of encouraging facilities-based competition,² a goal that the Department itself supports.³

It is imperative that the Department address the DS1 hot cut issue, since the FCC itself ignored it, assuming that all enterprise customers would either be upgraded from analog loops to new DS1s⁴ or that existing DS1s would be replaced with new DS1s.⁵ It apparently did not consider the much more likely (and certainly more efficient) scenario in which an existing ILEC DS1 would be migrated in place as a UNE DS1. Consequently, the FCC not only ignored the hot cut issue, but used this oversight as the basis for a finding on non-impairment:

[E]nterprise customers avoid potentially lengthy disruption of service due to physical hot cuts, occasionally experiencing an outage of only 10 to 30 seconds for incoming calls as their numbers are updated in the industry databases used to route calls. As a result, competitive carriers neither incur the costs of hot cuts nor experience the quality degradation associated with the cut over process to serve customers with loops with DS1 capacity and above.⁶

Clearly, this is not the case, so it is necessary for the Department to step in and supplement this analysis. Just as the FCC found that an efficient hot cut process was indispensable in the case of DS0 loops,⁷ and mandatory to a future finding of nonimpairment, so should the Department find for DS1 loops.

Fortunately, not only has the FCC authorized the D.T.E. to address this issue, it has *invited* it to do so. This is an "operational issue" that the FCC left to the states, in particular, to resolve.⁸ The FCC recognized that carriers could be impaired by operational barriers such as "incumbent LEC performance in provisioning loops."⁹ Recognizing also that it lacked "sufficient specific evidence concerning whether or where [operational barriers] will be significant enough to constitute impairment,"¹⁰ the FCC asked state commissions to "consider evidence, *which could include performance metrics and standards* for BOCs . . . of whether these factors are impairing entrants"¹¹

² See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 paras. 110-112 (1999).

³ Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc., MA D.T.E. 01-31-Phase I, Order at 89.

⁴ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-36 para. 451 (rel. Aug. 21, 2003) ("Triennial Review Order") ("Specifically, the conversion process for enterprise customers generally involves the initiation of service to the competitor's new digital loop while the incumbent's service remains in place.")

⁵ *Id.* ("Similarly, where enterprise customers are being converted from the digital facilities, the competing carrier installs and initiates service on a new digital loop in parallel with the customer's existing service.")

⁶ *Id.*

⁷ *Id.* para. 473.

⁸ *Triennial Review Order* para. 456.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (emphasis supplied).

PAETEC is rather unique in that it obtains access to the local network primarily by purchasing retail special access services from incumbents. In PAETEC's case then, a workable hot cut process provides benefits to all concerned: the Commonwealth fosters facilities-based competition, carriers like DSCI and InfoHighway obtain more choices, PAETEC is better able to compete and Verizon sells special access services at higher, non-TELRIC rates.

Consequently, PAETEC encourages the Department to conduct an investigation of the DS1 hot cut process and, if necessary, petition the FCC rebutting the enterprise switching nonimpairment finding until such a process is established.

Sincerely,

/s/ Harry N. Malone

Patrick J. Donovan
Philip J. Macres
Harry N. Malone

Counsel for PAETEC Communications, Inc.

cc: Jesse Reyes, Hearing Officer (8 copies)
JT Ambrosi, PAETEC
Service List for 03-59